IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 105/1999
AND
FIRST APPEAL NO. 68/2000
WITH
MISC. CIVIL APPLICATION NO. 692/2005 IN
FIRST APPEAL NO. 68/2000
WITH
FIRST APPEAL NO. 103/1999
AND
FIRST APPEAL NO. 69/2000

FIRST APPEAL NO. 105/1999

1. State of Goa
   through the Dy. Collector/
   Land Acquisition Officer,
   Panaji, Goa.
2. Executive Engineer,
   W.D. VI (R& B),
   Public Works Department,
   Fatorda, Margao, Goa. ..... Appellants.

V/s.

Pedro Paulo Toscano (since deceased)
represented by :

1(a) Mrs. Clara Viegas e Toscano (widow)
1(b) Mr. Angelo Toscano (son)
1(c) Mrs. Lourdes Toscano (daughter-in-law),
All residing at Toscano House,
I.C. Colony Road,
Borivili (West) Mumbai.
1(d) Mrs. Bernadette Toscano Pereira
(daughter)
1(e) Mr. Stephen Pereira (son-in-law),
Both residing at Damodar Park,
Ghatkopar, Mumbai.
1(f) Mrs. Sennen Toscano e Mascarenhas
(daughter),

1(g) Mr. Joe Mascarenhas (son-in-law)
Both residing at Yashoda Building,
Aquem Alto, Margao, Salcete, Goa.
1(h) Mrs. Cirila Toscano e Furtado (daughter)
1(i) Mr. Wenceslau Furtado (son-in-law)
Both residing at Allem Waddo,
Chinchinim, Salcete, Goa.
1(j) Sr. Zeilia Toscano (daughter)
residing at Toscano House,
I.C. Colony Road,
Borivili (West), Mumbai.
1(k) Mr. Leo Toscano (son),
1(l) Mrs. Goretti Viegas e Toscano
(daughter-in-law)
Both residing at House NO.600,
Orel, Assolna, Salcete, Goa. ..... Respondents.

Mr. Shaikh Vahiddula, Government Advocate for the appellants.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the respondents.

FIRST APPEAL NO. 68/2000
WITH
FIRST APPEAL NO. 68/2000

Pedro Paulo Toscano (since deceased)
represented by :

1(a) Mrs. Clara Viegas e Toscano (widow)
1(b) Mr. Angelo Toscano (son)
1(c) Mrs. Lourdes Toscano (daughter-in-law),
All residing at Toscano House,
I.C. Colony Road,
Borivili (West) Mumbai.
1(d) Mrs. Bernadette Toscano Pereira
(daughter)
1(e) Mr. Stephen Pereira (son-in-law),
Both residing at Damodar Park,
Ghatkopar, Mumbai.

1(f) Mrs. Sennen Toscano e Mascarenhas
(daughter),
1(g) Mr. Joe Mascarenhas (son-in-law)
Both residing at Yashoda Building,
Aquem Alto, Margao, Salcete, Goa.
1(h) Mrs. Cirila Toscano e Furtado (daughter)
1(i) Mr. Wenceslau Furtado (son-in-law)
Both residing at Allem Waddo,
Chinchinim, Salcete, Goa.
1(j) Sr. Zeilia Toscano (daughter)
residing at Toscano House,
I.C. Colony Road,
Borivili (West), Mumbai.
1(k) Mr. Leo Toscano (son),
1(l) Mrs. Goretti Viegas e Toscano
(daughter-in-law)
Both residing at House NO.600,
Orel, Assolna, Salcete, Goa. ..... Appellants.

V/s.

1. State of Goa
through the Dy. Collector/
Land Acquisition Officer,
Panaji, Goa.
2. Executive Engineer,
W.D. VI (R& B),
Public Works Department,
Fatorda, Margao, Goa. ..... Respondents.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. Lobo, Advocate for the appellants.

Mr. Shaikh Vahidula, Government Advocate for the respondents.

FIRST APPEAL NO. 103/1999

1. State of Goa
through the Dy. Collector/
Land Acquisition Officer,

Panaji, Goa.
2. Executive Engineer,
W.D. VI (R& B),
Public Works Department,
Fatorda, Margao, Goa. ..... Appellants.

V/s.

Antonio Jose Herodoto,
L.F. Rodrigues,
r/o. H.No.247, B.A.C.,
Pacheco Road, Borda, Margao, Goa. ..... Respondent.

Mr. M. D. Salkar, Addl. Govt. Advocate for the appellants.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the respondent.

FRIST APPEAL NO. 69/2000

Antonio Jose Herodoto,
L.F. Rodrigues,
r/o. H.No.247, B.A.C.,
Pacheco Road, Borda, Margao, Goa. ..... Appellant.

V/s.

1. State of Goa
through the Dy. Collector/
Land Acquisition Officer,
Panaji, Goa.
2. Executive Engineer,
W.D. VI (R& B),
Public Works Department,
Fatorda, Margao, Goa. ..... Respondents.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the appellant.

Mr. M. D. Salkar, Addl. Govt. Advocate for the respondents.

CORAM : P.V. KAKADE, J.

Date of reserving the Judgment :
19th August, 2006.

Date of pronouncing the Judgment :
13th **October, 2006.**

J U D G M E N T :

All these four appeals are being disposed of by this common Judgment as they pertain to acquisition of land under the provisions of the Land Acquisition Act by common notification No. 22/44/85-RD dated 25.4.1985. The claimant in First Appeal No.68/2000 filed the reference under Section 18 of the Land Acquisition Act which was adjudicated by the learned Addl. District Judge and the reference came to be partly allowed. Hence, not satisfied by the award granted by the Addl. District Court, the claimant as well as the State have preferred these appeals i.e. First Appeal No.68/2000 and First Appeal No.105/99.

Similarly, the claimant in First Appeal No.69/03 filed a reference under Section 18 of the Land Acquisition Act which was partly allowed and, therefore, both the parties involved, being not satisfied, have filed First Appeal No.69/2000 and First Appeal No.103/99.

2. Heard learned Counsel for both the parties in all the said

appeals. Perused the record. It may be noted that in both the references, the learned trial Judge was of the view that the market rate of the acquired land was required to be fixed at the rate of Rs.45/- per sq. metre, and proceeded to pass the said award along with other statutory benefits, so far as First Appeal No. 68/2000 was concerned. However, in First Appeal No.69/2000, though the trial Judge granted the enhanced compensation at the rate of Rs.45/- per sq. metre, rejected the statutory components contemplated under Section 23(2) of the Land Acquisition Act on the ground that it was not payable under law.

3. Let us now take first set of appeals i.e. First Appeal No.68/2000 and State appeal, First Appeal No.105/99 for consideration. As noted earlier, by Notification dated 25.4.1985, the Government acquired portion of the claimant's property from Survey No.33/2 of Village Pale. The notification was duly published and the award was declared on 13.5.1988, awarding compensation at the rate of Rs. 30/- per sq. metre by the Special Land Acquisition Officer in respect of an area of 1850 sq. metres. The claimant accepted the same under protest and filed the reference under Section 18 of the Land Acquisition Act, claiming market rate of the acquired land at the rate of Rs.150/- per sq. metre as on the date of publication of the Notification. It was also claimed by the claimant

that the actual area of the acquired land was 2440 sq. metres and further claimed that there were several trees, of which the value was to the extent of Rs.30,000/-. Further he claimed that a potion of his land was rendered useless and, therefore, severance compensation to the extent of Rs.3,00,000/- also came to be claimed. On the basis of the pleadings and available evidence, the learned trial Judge proceeded to adjudicate the reference and came to the conclusion that it was proved that the land under acquisition was valued at the rate of Rs.45/- per sq. metre. It was further held that the claimant was not entitled to either value of the trees or the alleged severance of land.

4. In the second set of appeals, i.e. First Appeal No.69/2000 and State appeal First Appeal No.103/99, the notification was of the same date i.e. 25.4.85 and the claimant's property admeasuring 1370 sq. metres from Survey No.39(part) of Village Pale was acquired. The Land Acquisition Officer declared the award on 13.5.88 awarding compensation at the rate of Rs.30/- per sq. meter. However, it was claimed by the claimant in his reference under Section 18 of the Act that the land was required to be evaluated at the rate of Rs.125/- per sq. metre. He also prayed for additional compensation of 12 % for solatium. The learned trial Judge, in this appeal also fixed the market value of the land at the rate of Rs.45/-

per sq. metre, but denied component as contemplated under Section 23(2) of the Land Acquisition Act. Hence, the appeals.

5. In both the matters, by the claimants as well as the State, the learned Government Pleader also filed his written submissions, mainly contending that the learned District Judge did not appreciate the evidence on record in proper perspective and it was submitted that in both the matters, the land could not have been evaluated at the rate of Rs.45/- per sq. metre as the land, in question, was totally unfit for construction and had no building potential to the same. On this basis, it was submitted that the market price fixed by the Land Acquisition Officer at the rate of Rs.30/- per sq. metre was just and proper and should be restored.

6. On the other hand, the learned Counsel for the claimants in both the appeals, have vehemently urged that their lands were much more valuable which were assessed to be by the learned Addl. District Judge which, according to them, was sufficiently proved on the basis of the evidence on record which consisted of similar sale instances as well as expert evidence.

7. Initially, taking into consideration the other allegations in First

Appeal No.68/2000 in respect of claim for trees as well as allegedly severed land, it must be noted that the evidence on record was sufficient to show that it was admitted by the claimant that a footpath having width of 1 to 1.5 metres was passing through the property and the road was constructed on the existing footpath and, therefore, it was evident that the property of the claimant was severed even before the construction of the road and, as such, the claim of severance was not tenable. I, on the basis of the available evidence, concur with the findings recorded by the learned Addl. District Judge and I am inclined to hold that the concerned claimant is not entitled for severance compensation.

Similarly, the evidence regarding the alleged damage to the trees is also not satisfactory. Therefore, the learned Addl. District Judge has rightly negatived the claim in that regard.

8. The applicant produced the sale deed dated 5.9.1984 between one Amancio Francisco Xavier de Souza and one Carmo Martins vide Exhibit AW.1/C-2. By the said sale deed, a plot of land admeasuring 787.55 sq. metres was sold at the rate of Rs.90/- per sq. metre. It was deposed by the claimant that the said sale deed plot was at a distance of about 300 metres away from the acquired land. The claimant-applicant also examined one Caetano Martins, as AW.4, who was one of the

purchasers to the said sale deed. AW.4 has deposed that he had negotiated the price in the year 1981, at which time he had paid Rs.10,000/- as earnest money. However, his evidence is found to be not trust-worthy. The claimant also relied upon one sale deed dated 17.5.85 at Exhibit AW.1/C-3 which revealed that the sale transaction of a plot of land was for the price of Rs.40,000/- and it was sold at the rate of Rs.80/- per sq. metre. It is an admitted fact that plot in the said sale deed at Exhibit AW.1/C-3 admeasuring 400 sq. metres was outlined as a residential zone and that necessary NOC for sale was granted by the Mormugao Building and Development Authority. On the other hand, the acquired land was not accessible by motorable tarred road and, thus, it is evident that the said plot could not have been developed without making provision for road, water supply, drainage, sewage, etc. and besides, the fact that the acquired land having larger area, cannot fetch a price at the same rate at which smaller plots are sold. This dis-similarity between the sale deed plot and the acquired land warranted deduction of 30 % and after deducting 30 %, the rate of the land worked out to Rs.56/- per sq. metre.

9. The expert evidence is also on record. However, his evaluation at the rate of of Rs.90/- pr sq. metre, cannot be accepted for more than one reason. He has relied upon two sale deeds, dated 5.9.84 and 17.5.85,

but has not considered the fact that there were coconut trees in the said sale deed plots and the price was inclusive of the value of the trees. Therefore, the sale instances which are at Exhibit AW.1/C-2 and AW.1/C-3 are indicatives of the market price of the impugned property and taking into consideration the requirement for deduction for development, the Addl. District Judge has observed that the market price of the said plot, on the basis of the available evidence, was Rs.45/- per sq. metre. In view of the facts and circumstances, I do not see any reason why it should not be concurred with, especially in the absence of any other material to discard the same. Hence, I hold that the land in First Appeal No.68/2000 is properly evaluated to be the market value at Rs.45/- per sq. metre.

10. Turning to the land involved in First Appeal No.69/2000, similar situation has arisen in so far as the evidence on record is concerned. The learned Addl. District Judge appears to have taken into account the similarly situated sale instances and has held that the sale deed at Exhibit AW.1/B was the proper indicator for fixing the market price of the property. While considering the dis-similarity between the sale deed plot and the acquired land, deduction of 30 % for the purpose of development has been evaluated and the suit land is worked out at Rs.56/- per sq. metre. Suffice it to say, therefore, that in both the matters, the learned

Addl. District Judge has relied upon the sale instances of similarly located land and has also given latitude of 30 % deduction for the purpose of development which appears to be just, legal and proper and, therefore, has to be accepted.

11. In First Appeal No.69/2000, the learned Addl. District Judge has held that the claimant is not entitled to the statutory benefits as contemplated under Section 23(2) of the Land Acquisition Act. That finding was recorded in view of the Apex Court's ruling in ***Prem Nath Kapur vs. National Fertilizers Corporation of India Ltd.,*** 1996(2) SCC 71. However, it is needless to mention that it is no more good law in view of the Apex Court ruling in ***Sunder vs. Union of India*** (2001) 7 SCC 211 that the claimant, under such circumstances, would be entitled to the component contemplated under Section 23(2) of the Land Acquisition Act. This ruling, undoubtedly, holds the field today and, therefore, to that extent the claimant's appeal has to be allowed holding that besides other statutory benefits awarded by the lower Court in favour of the claimant, the claimant shall also be entitled to the statutory components contemplated under Section 23(2) of the Land Acquisition Act.

12. For the reasons recorded above, I pass the following Order :

First Appeal No.105/1999 filed by the State and First Appeal No.68/2000 filed by the claimant stands dismissed, with no order as to costs. Consequently, Misc. Civil Application No.692/05 also stands disposed of with no order as to costs.

First Appeal No.103/99 is, hereby, dismissed with no order as to costs; whereas First Appeal No.69/2000 is partly allowed to the extent to hold that besides other statutory benefits awarded by the lower Court in favour of the claimant, the claimant shall also be entitled to the statutory components contemplated under Section 23(2) of the Land Acquisition Act. With these directions, appeals stand disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.